UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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BIO HI-TECH CO., LTD.,

Plaintiff,

- against -

COMAX, INC. and TONY PARK,

Defendants.
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ORDER ADOPTING
REPORT & RECOMMENDATION
07-CV-2260 (RRM)(CLP)

MAUSKOPF, United States District Judge.

By Order dated August 18, 2008, this Court granted default judgment against Defendants Comax, Inc. and Tony Park in the above captioned action [docket entry 33]. The matter was subsequently referred to Magistrate Judge Cheryl L. Pollak for an inquest and Report & Recommendation ("R&R") on the issue of damages [*id.*], which R&R issued July 27, 2009 [docket entry 43]. By that R&R, Magistrate Judge Pollak recommended contractual damages in the form of equitable relief – the only form of relief sought – requiring Defendants immediately to return Plaintiff Bio Hi-Tech Co., Ltd's valuable technology, namely, Bio Hi-Tech's B10-X11 waste-processing machine, and further restraining Defendants from holding themselves out as agents, representatives, or distributors of Bio Hi-Tech's products.

The R&R recited that "[a]ny objections to this [R&R] must be filed with the Clerk of Court, with a copy to the undersigned, within ten (10) days of receipt of this Report," R&R at 15, and that "[f]ailure to file objections within the specified time waives the right to appeal the District Court's Order." *Id.* The Clerk of Court mailed a copy of the R&R to Defendants at their last known addresses on July 28, 2009, but each mailing was returned as undeliverable [docket entries 44 & 45]. To date, no objections have been filed.

Where notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Am,* 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.,* 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent Great Meadow Corr. Facility,* 219 F.3d 162, 174 (2d Cir. 2000).

Here, Defendants were given adequate notice because they were served at the last known address of corporate Defendant Comax, Inc., of which Defendant Tony Park is a principal shareholder. *See Ann Taylor, Inc. v. Interstate Motor Carrier, Inc.,* 2004 WL 2029908, at *l-*3 (S.D.N.Y. Sept. 13, 2004) (granting motion for a default judgment after service by mail at the defendants' last known address were returned as "underliverable"). Therefore, as no error appears on the face of the Magistrate Judge's R&R, and because this Court agrees with the Magistrate Judge Pollak's careful and well-reasoned analysis, the Court adopts the R&R without *de novo* review. *See Century 21 Real Estate LLC v. Paramount Home Sales, Inc.*, 2007 WL 2403397, *1 (E.D.N.Y. Aug. 20, 2007) (adopting without de novo review an unobjected to R&R, despite attempted mail service of R&R being returned as undeliverable); *Century 21 Real Estate LLC v. Bercosa Corp.*, 2009 WL 3111759, *1 (E.D.N.Y. Sept. 18, 2009) (adopting recommendation for injunctive relief, among other things, in unobjected to R&R returned as undeliverable).

Accordingly, the Clerk of Court is hereby directed to enter judgment as follows: default judgment in favor of Plaintiff Bio Hi-Tech, which shall include injunctive relief ordering the

Defendants to surrender immediately Plaintiff's equipment, namely the Bio Hi-Tech's B10-X11 waste-processing machine, and further restraining Defendants from holding themselves out as agents, representatives, or distributors of Bio Hi-Tech's products.

SO ORDERED.

Dated: Brooklyn, New York
October 27, 2009

s/RRM

ROSLYNN R. MAUSKOPF
United States District Judge